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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,586	04/11/2006	Udo Van Stevendaal	DE030349 US1	9550
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EXAMINER CORBETT, JOHN M				
ART UNIT 2882		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/575,586

Applicant(s)

VAN STEVENDAAL ET AL.

Examiner

JOHN M. CORBETT

Art Unit

2882

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-13.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Edward J Glick/
 Supervisory Patent Examiner, Art Unit 2882

Continuation of 11, does NOT place the application in condition for allowance because:

With respect to the 35 USC 101 rejection of claim 13, the applicant argues that the claim requires statutory subject matter. The Examiner disagrees. The Examiner notes that the preamble sets for the claim as a program and the computer readable medium is set forth as an intended use of the program. Therefore, the claim is not directed to one of the statutory categories of invention (See MPEP 2106.01), but is directed to nonstatutory functional descriptive material. As such, the applicant's argument is not persuasive and the claim remains rejected.

With respect to at least claims 1, 5, 8 and 13, the applicant argues that "a combination yielding predictable results and resulting in an improved device is not a standard for obviousness". The Examiner disagrees. The Examiner notes that the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. An exemplary rationale that may support a conclusion of obviousness includes simple substitution of one known element (device/technique/method, etc...) for another to obtain predictable results. A claim rejection based upon this rationale must resolve the *Graham* factual inquiries and articulate findings in support of this rationale.

In this case, the prior art reference *Harding* (US 6,470,067) discloses an apparatus and method for performing the acquisition and data processing of coherently scattered x-rays (Title and Abstract). The apparatus and method utilizes a detector (16) comprising in at least one embodiment energy resolving (Col. 4, lines 35-38) detector elements. The detector consists of detector element (161) positioned offset from a primary radiation path and detector element (160) positioned at the center detecting the primary radiation (Col. 4, lines 5-10 and Figures 1 and 3). The energy resolving detector elements are configured to acquire a spectrum (Col. 1, lines 27-38, Col. 4, lines 17-24 and Col. 4, lines 30-38). Lamellas (60) are situated in planes which subdivide the fan beam into a number of segments which are considered approximately as a "pencil beam" (Col. 2, lines 1-15). Data obtained from detector elements 160 and 161 are utilized to reconstruct images of the object representative of the momentum transfer spectrum (or scattering density) of the object in the examination zone (Col. 1, lines 53-56, Col. 3, lines 57 - Col. 4, line 24, Col. 4, lines 55-61 and Figure 4).

The prior art reference *Harding et al.* (US 4,754,469) teaches an apparatus and method for performing the acquisition and data processing of coherently scattered x-rays (Abstract and Figures 1-3) that utilizes a detector (5) comprising energy resolving (Col. 3, lines 18-31) detector/elements. The detector consists of detector/element(s) (D1-DN) positioned offset from a primary radiation path and detector/element (D0) positioned at the center detecting the primary radiation (Col. 3, lines 18-31 and Figure 1). The energy resolving detector/element(s) are configured to acquire a spectrum (to include Col. 3, lines 25-29). The primary beam is collimated to a small-section or "pencil beam" (Col. 3, lines 12-15). Data obtained from detector/elements (D0-DN) is utilized to reconstruct images of the object representative of the scattering density (or momentum transfer spectrum) of the object in the examination zone (Col. 6, lines 11-46). Therefore, the Examiner found that both *Harding* ('067) and *Harding et al.* ('469) disclose and teach respectively, apparatus and methods for reconstructing images of the object representative of the momentum transfer spectrum (or scattering density). *Harding et al.* ('469) further teaches energy resolving detector/element(s) by scintillators (Page 3, lines 20-31) with which the acquired data is used to reconstruct the images of the object representative of the scattering density (or momentum transfer spectrum). Therefore, the Examiner further found that the prior art reference (i.e., *Harding* ('067)) contained a known element (device/technique/method, etc...) upon which the claimed invention can be seen as an improvement and which differs from the prior art by a known technique (i.e. *Harding et al.*, energy resolving by scintillator detectors).

As a result of the respective teachings of *Harding* ('067) and *Harding et al.* ('469), the Examiner further found that one of ordinary skill in the art would have recognized that applying the known element (device/technique/method, etc...) would have yielded predictable results and resulted in an improved device/technique/method thus satisfying the standard for obvious rational as established by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007). Therefore, the applicant's argument that "a combination yielding predictable results and resulting in an improved device is not a standard for obviousness" is not persuasive and the claims remain rejected.

With respect to at least claims 1, 5, 8 and 13, the applicant argues "the teachings of the present application" has been utilized "as a road map to pick and choose amongst prior art references for the purposes of attempting to arrive at the presently disclosed invention". In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. Therefore, the applicant's argument is not persuasive and the claims remain rejected.

With respect to at least claims 1, 5, 8 and 13, the applicant argues that there is no teaching "to utilize a detector made up of both energy resolving detector element positioned offset from the primary radiation path and a scintillator detector element positioned along the primary radiation path". In response, the Examiner notes that the applicant appears to be arguing separate detectors/elements having different structures and/or operating modes. The Examiner disagrees with assertion. The claim does not preclude the use of detector/elements that are both energy resolving and a scintillator. Therefore, the applicant's argument is not persuasive and the claims remain rejected.